

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
Asheville Division
Case No. 1:12-cv-388

WILLIAM N. DEVLIN and wife)
CARRI A. LUCKSAVAGE,)
)
Plaintiffs)

v.)

PLAINTIFF'S SUPPLEMENTATION
TO THEIR RESPONSE
TO DEFENDANT'S
MOTION TO DISMISS

)
WELLS FARGO BANK, N.A.)
)
Defendant)
_____)

COMES NOW, the Plaintiffs in the above entitled action by way of counsel and hereby supplement their response to the Defendant's motion to dismiss and would show unto this honorable court the following:

- 1). The Defendant herein filed a motion to dismiss this case on August 30, 2013.
- 2). Thereafter, on September 12, 2013, the Plaintiffs filed their response to the same and the Defendant herein filed a reply to the same on or about September 18, 2013.
- 3). Subsequent to this filing, in response to various independent inquiries of these Plaintiffs the Defendant provided information associated with the tax forms it had in its possession related to the loan which is the subject of this case. Specifically, the Defendants provided copies of tax forms used in connection with the subject loan upon which this cause of action is based.
- 4). One of these documents is attached hereto as **Exhibit 1**; the material provided by the Defendant is labeled "A" on this exhibit, it shows a reported income in 2003 for the Plaintiff Carri Lucksavage in the amount of **\$77,274.89**; however, label "B" on the same exhibit is the true and accurate tax form which shows that Carri Lucksavage made **\$29,308.02**. This is evidence in support of the allegations made in the complaint.

5). The Plaintiffs contend that but for these actions (falsification of tax forms) no loan would have ever been approved. It is presumed that this loan was manufactured by the Defendants as part of its effort to produce value within its bank as alleged in the complaint.

6). These additional facts are being presented in order to support the previously filed response to the motion filed by the Defendant herein.

This the 21st day of October 2013

s/David R. Payne, P.A. by David R. Payne
One North Pack Square Ste 300
Asheville, NC 28801
Bar No. 19945
dpayne@drplawfirm.com

CERTIFICATE OF SERVICE:

The undersigned, does hereby certify that a true and accurate copy of this supplementation to the response to the Defendant's motion to dismiss was served on counsel opposite in this matter by way of the electronic filing system utilized by the United States District Court; furthermore, the same was mailed, via US Mail, pre posted paid to the following:

Kenneth B. Oettinger, Jr.
Womble, Carlyle, Sandridge & Rice, PLLC
One Wells Fargo Center, Suite 3500
Charlotte, NC 28202-6037

s/David R. Payne 10/21/2013

PLAINTIFF'S EXHIBIT

A

a Control number		This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.			
b Employer identification number 56-0611587		1 Wages, tips, other compensation 77274.89		2 Federal income tax withheld 1250.35	
c Employer's name, address, and ZIP code ELIADA HOMES, INC 2 COMPTON DRIVE ASHEVILLE, NC 28806		3 Social security wages 77274.89		4 Social security tax withheld 4791.04	
		5 Medicare wages and tips 77274.89		6 Medicare tax withheld 120.49	
		7 Social security tips		8 Allocated tips	
d Employee's social security number 238-53-3937		9 Advance EIC payment		10 Dependent care benefits	
e Employee's first name and initial CARRI A LUCKSAVAGE		11 Nonqualified plans		12a See instructions for box 12	
55 STAFFORD COURT FLETCHER, NC 28732		13 Statutory employee <input type="checkbox"/> Retirement plan <input checked="" type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b	
		14 Other		12c	
				12d	
f Employee's address and ZIP code					
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax
NC	011001365	77274.89	4643.30		
		20 Locality name			

Form **W-2** Wage and Tax
Statement

2003

Department of the Treasury—Internal Revenue Service

Safe, accurate,
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IRS **e-file**

Copy B To Be Filed with Employee's FEDERAL Tax Return.

B

a Control number		OMB No. 1545-0008				This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.	
b Employer identification number 56-0611587		1 Wages, tips, other compensation 28308.02		2 Federal income tax withheld 3524.82			
c Employer's name, address, and ZIP code Eliada Homes, Inc. 2 Compton Drive Asheville, NC 28806		3 Social security wages 29189.94		4 Social security tax withheld 1809.86			
		5 Medicare wages and tips 29189.94		6 Medicare tax withheld 423.28			
		7 Social security tips		8 Allocated tips			
d Employee's social security number 238-53-3937		9 Advance EIC payment		10 Dependent care benefits			
e Employee's name, address, and ZIP code Carri A LUCKSAVAGE 55 Stafford Court Fletcher NC 28732		11 Nonqualified plans		12a See instructions for box 12 E 881.92			
		13 Statutory employee <input type="checkbox"/> Retirement plan <input checked="" type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b			
		14 Other		12c			
				12d			
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name	
NC	011001365	28308.02	1638.00				

Form **W-2** Wage and Tax
Statement

2003

Department of the Treasury—Internal Revenue Service

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IRS **e-file**

Copy C For EMPLOYEE'S RECORDS. (See Notice to
check of Copy B) or Copy 2 to be Filed With